

## Message Text

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ORIGIN STR-07

INFO OCT-01 IO-13 ISO-00 COME-00 TRSE-00 LAB-04 ITC-01  
CTME-00 STRE-00 EB-08 L-03 AGRE-00 CEA-01 CIAE-00  
DODE-00 FRB-03 H-01 INR-10 INT-05 NSAE-00 NSC-05  
PA-01 AID-05 SS-15 ICA-11 SP-02 SOE-02 OMB-01  
DOE-15 OIC-02 AF-10 ARA-10 EA-10 EUR-12 NEA-11  
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CUSTOMS:JO'LOUGHLIN  
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MTN

E.O. 11652: N/A

TAGS: ETRD, MTN

SUBJECT: GUIDANCE FOR UPCOMING DISCUSSIONS ON CUSTOMS  
VALUATION

1. FOR PURPOSES OF BILATERAL, PLURILATERAL, AND MULTI-  
LATERAL MEETINGS ON CUSTOMS VALUATION DURING THE WEEK OF  
JUNE 5, MTN DEL SHOULD BE GUIDED BY THE COMMENTS SET FORTH  
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BELOW.

2. IN GENERAL, WE ARE PLEASED WITH THE REVISED EC DRAFT  
OF ARTICLES 1-7 OF THEIR PROPOSED CUSTOMS VALUATION CODE  
AND BELIEVE THAT IT ADEQUATELY RESPONDS TO MANY U.S. CON-  
CERNS WITH THEIR PREVIOUS DRAFTS. WE OFFER THE FOLLOWING  
COMMENTS AND SUGGESTIONS.

3. THE PHRASE "AND OTHER RELEVANT PROVISIONS" IN LINE 4 OF ARTICLE 1, WHILE RESPONDING TO THE NORDICS, WILL EVENTUALLY REQUIRE CLARIFICATION AS THE NEGOTIATIONS PROCEED.

4. THE PHRASE "UNDER ARTICLE 1" IN LINE 2 UNDER ARTICLE (2)(1)(A) SHOULD READ "UNDER THE PROVISIONS OF ARTICLE 1."

5. WE CONTINUE TO BELIEVE THAT ARTICLE 2(1)(B) SHOULD READ "IN APPLYING THIS ARTICLE, THE TRANSACTION VALUE OF IDENTICAL GOODS IN A SALE AT THE SAME OR CLOSEST COMMERCIAL

AND QUANTITY LEVELS SHALL BE USED TO ESTABLISH THE CUSTOMS VALUE." WE REMAIN OPPOSED TO ANY ADJUSTMENTS FOR COMMERCIAL OR QUANTITY LEVELS.

6. IN THE DEFINITION IN ARTICLE 2 FOR IDENTICAL GOODS, WE CONTINUE TO WONDER WHY THE EC PREFERS THE EXPRESSION "GROWN, PRODUCED, OR MANUFACTURED" INSTEAD OF THE WORD "PRODUCED." AN EXPLANATORY NOTE ON THIS ITEM WILL PROBABLY BE NECESSARY.

7. ARTICLE 2(3) REGARDING ADJUSTMENTS FOR TRANSPORT COSTS IS BASICALLY A GOOD IDEA BUT WE BELIEVE THAT PREVIOUS EC LANGUAGE MAY BE PREFERABLE TO CURRENT EC LANGUAGE. THIS POINT SHOULD BE FURTHER EXPLORED.  
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8. THE PHRASE "UNDER ARTICLE 1" IN LINE 2 OF ARTICLES (3)(1)(A) SHOULD READ "UNDER THE PROVISIONS OF ARTICLES 1 AND 2."

9. OUR COMMENTS ON ARTICLE 2 IN PARAGRAPHS 5, 6, AND 7 ALSO APPLY TO ARTICLE 3. IN ADDITION, THE PHRASE "CLOSELY RESEMBLES" IN THE DEFINITION OF "SIMILAR GOODS" CONTINUES TO TROUBLE US. IT IS QUITE CONCEIVABLE, FOR EXAMPLE, TO HAVE TWO MACHINES THAT MEET ALL THE OTHER REQUIREMENTS OF THE DEFINITION BUT THAT DON'T "CLOSELY RESEMBLE" EACH OTHER IN APPEARANCE. THE CURRENT EC DEFINITION WOULD UNNECESSARILY PRECLUDE THESE MACHINES FROM BEING SIMILAR GOODS.

10. WE BELIEVE THAT IT WOULD BE APPROPRIATE TO TRANSMIT TO THE EC OUR PROPOSED LANGUAGE ON ARTICLE 4 CONTAINED IN STATE 115877 IF THEY AGREE TO UNDERTAKE TO DRAFT A SECTION ON APPROPRIATE SAFEGUARDS TO THE USE OF COMPUTED VALUE THAT WOULD MAKE THAT STANDARD MORE PALATABLE TO THEM. WE SHOULD CONTINUE TO EMPHASIZE THAT WE DON'T BELIEVE THAT DEDUCTIVE VALUE IS A PARTICULARLY USEFUL

STANDARD BUT THAT, IF IT WERE TO BE ADOPTED, ITS APPLICATION COULD BE IMPROVED ALONG THE LINES OF OUR PROPOSED REDRAFT.

11. WE HAVE PRELIMINARILY CONSIDERED ARTICLE 5BIS AND ARE CONCERNED THAT IT REMAINS TOO OPEN-ENDED AND MIGHT STILL ALLOW FOR ARBITRARY VALUATION IN CERTAIN CASES. WE WOULD LIKE TO FURTHER DISCUSS THIS ARTICLE WITH THE EC, ALTHOUGH OUR BASIC POSITION CONTINUES TO BE THAT A COMPUTED VALUE STANDARD IS SUFFICIENT AS A FINAL FALLBACK STANDARD. WE ALSO BELIEVE THAT SOME PROVISION FOR INFORMING THE IMPORTER OF HOW HIS GOODS WERE VALUED, AS

IS CONTEMPLATED IN ARTICLE (5BIS)(4), IS DESIRABLE AND LIMITED OFFICIAL USE

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DESERVES FURTHER CONSIDERATION IN THE CONTEXT OF THIS ARTICLE AND ARTICLE 14.

12. IN RECOGNITION OF OUR COMMITMENT TO THE EC TO SUGGEST OTHER POSSIBLE FINAL FALLBACK STANDARDS, WE OFFER THE FOLLOWING POSSIBILITY (PARA. 13), WHICH MAY BE GIVEN TO THE EC AS APPROPRIATE. IT SHOULD BE STRESSED THAT, AS STATED ABOVE, THE U.S. POSITION CONTINUES TO BE THAT A COMPUTED VALUE STANDARD IS A SUFFICIENT FINAL STANDARD AND THAT THE U.S. SUGGESTION DOESN'T REPRESENT A U.S. PROPOSAL BUT IS MERELY PUT FORTH FOR DISCUSSION.

13. FINAL FALLBACK PROVISION:  
IF THE CUSTOMS VALUE OF THE IMPORTED GOODS CANNOT BE DETERMINED UNDER THE PROVISIONS OF ARTICLES , , AND , THE VALUE SHALL BE ESTABLISHED BY ALL REASONABLE WAYS AND MEANS, BASED ON OBJECTIVE CRITERIA AND SHALL HAVE DUE REGARD TO THE PRINCIPLES AND GENERAL PROVISIONS OF THIS CODE, USING ONE OF THE FOLLOWING METHODS:

(1) A VALUE BASED ON THE PRICE AT WHICH IDENTICAL OR SIMILAR GOODS ARE SOLD TO UNRELATED BUYERS IN THE DOMESTIC MARKET OF THE COUNTRY OF EXPORTATION, WITH DUE ALLOWANCE FOR DIFFERENCES IN QUANTITY AND TRADE LEVELS, TRANSPORT COSTS, AND OTHER COSTS NOT INCURRED IN SALES FOR EXPORT.

(2) A VALUE BASED ON THE PRICE AT WHICH GOODS, ALTHOUGH NOT MEETING THE DEFINITIONS OF IDENTICAL AND SIMILAR GOODS, ARE OF THE SAME GENERAL CLASS OR KIND IN SALES TO UNRELATED BUYERS FOR EXPORT TO THE COUNTRY OF IMPORTATION FROM THE SAME COUNTRY OF EXPORTATION AS THE GOODS BEING VALUED.

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(3) A VALUE BASED ON THE PRICE IN SALES TO UNRELATED BUYERS IN THE COUNTRY OF IMPORTATION FROM SELLERS IN COUNTRIES OTHER THAN THE COUNTRY OF EXPORTATION OF GOODS WHICH WOULD OTHERWISE BE CONSIDERED AS BEING IDENTICAL OR SIMILAR BUT FOR THE FACT THEY WERE PRODUCED IN A COUNTRY DIFFERENT THAN THE GOODS BEING VALUED.

(4) A VALUE BASED ON THE PRICE IN SALES OF IDENTICAL OR SIMILAR GOODS BY SELLERS IN THE COUNTRY OF EXPORTATION TO UNRELATED BUYERS IN COUNTRIES OTHER THAN THE COUNTRY OF IMPORTATION OF THE GOODS BEING VALUED.

(5) A VALUE BASED ON THE PRICE AT WHICH GOODS WHICH HAVE BEEN FURTHER PROCESSED AFTER IMPORTATION ARE SOLD BY THE IMPORTER TO UNRELATED PERSONS IN THE COUNTRY OF IMPORTATION, DUE ALLOWANCE BEING MADE FOR THE COST OR VALUE OF SUCH PROCESSING (IN ADDITION TO THE ALLOWANCES PROVIDED FOR IN ARTICLE 4).

14. WE HAVE GIVEN FURTHER THOUGHT TO THE NOTION IN PREVIOUS EC DRAFTS THAT, IF THE TRANSACTION VALUE IS UNACCEPTABLE, THE IMPORTER BE ALLOWED TO ELECT THE FALLBACK PROVISION UNDER WHICH HIS GOODS SHOULD BE VALUED. WE WOULD LIKE TO FURTHER EXPLORE THIS NOTION WITH THE EC AND OTHER DELS.

15. ARTICLE 6. "ESTABLISHED" AND "DOES" IN THE LAST LINE OF ARTICLE (6)(1) SHOULD READ "DEMONSTRATED" AND "DID," RESPECTIVELY. THE TERM "THE TRANSACTION VALUE" SHOULD REPLACE THE TERM "THE PRICE PAID OR PAYABLE" IN ARTICLE 6(2)(A), 6(2)(B), AND 6(2)(D) SO THAT A FULLY ADJUSTED PRICE IS BEING COMPARED WITH OTHER FULLY ADJUSTED PRICES. ARTICLE (6)(2)(C) SHOULD READ "THE VALUE OF THE SAME, IDENTICAL OR SIMILAR..." WE CAN

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AGREE TO DELETE ARTICLE (6)(2)(D) IF OTHERS SO DESIRE.

16. ARTICLE (6)(3) SHOULD BE MODIFIED TO READ, "IN APPLYING THE TESTS SET FORTH IN PARAGRAPH (2) ABOVE, DUE ACCOUNT SHALL BE TAKEN OF DIFFERENCES IN COMMERCIAL AND QUANTITY LEVELS, TRANSPORT COSTS, AND DIFFERENCES ATTRIBUTABLE TO COSTS INCURRED BY..."

17. WE VERY MUCH DESIRE A DETAILED DISCUSSION WITH THE EC AT OUR NEXT MEETING ON ARTICLES 7-16 AND HOPE THAT, BEFORE THE EC FORMALLY CIRCULATES ANY REVISED DRAFT AS A GATT DOCUMENT, WE AND THE EC REACH SOME MEASURE OF AGREEMENT ON THESE ARTICLES.

18. AS FOR ARTICLE 7, IT IS NECESSARY TO REDRAFT THE INTRODUCTION TO INSURE THAT THESE ADJUSTMENTS ARE ONLY MADE IF THEY ARE EXPENSES ACTUALLY INCURRED AS PART OF THE TRANSACTION INVOLVING THE IMPORTED GOODS. WE BELIEVE THAT ARTICLE 7(A) SHOULD BE DELETED SINCE IT WOULD, IN EFFECT, ALLOW FOR ARBITRARY UPLIFTS. THE PURPOSE OF ARTICLE 7(G) IS TO SPECIFICALLY ENUMERATE WHAT IS CONTEMPLATED IN ARTICLE 7(A). WE STRONGLY BELIEVE THAT ADJUSTMENTS SHOULD ONLY BE MADE ON THE BASIS OF SPECIFIC PROVISIONS IN THE CODE. WE ARE FULLY WILLING TO CONSIDER ADDITIONS TO, OR DELETIONS FROM, THE LIST SET OUT IN ARTICLE (7)(G). ON THE OTHER HAND, WE ARE INCLINED TO OPPOSE BOTH (7)(H), WHICH IS NOT PRESENTLY INCLUDED IN U.S. LAW, AND 7(I).

19. AS FOR ARTICLES 8-16, OUR POSITION IS SET FORTH IN PARAGRAPHS 7-15 OF STATE 115877. WE HAVE NOTHING FURTHER TO ADD AT THIS POINT. CHRISTOPHER

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## Message Attributes

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